

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of }  
PHILIP YORDAN, SAMUEL J. YORDAM, }  
EDITH YORDAN AND IRVING AND }  
BEATRICE YORDAN }

Appearances:

For Appellants: Joseph V. Broffman, Public  
Accountant

For Respondent: A. Ben Jacobson, Associate  
Tax Counsel

O P I N I O N

These appeals are made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Philip Yordan, Samuel J. Yordan, Edith Yordan and Irving and Beatrice Yordan to proposed assessments of additional personal income tax for the year 1946 in the amounts of \$794.42 against Philip Yordan, \$252.00 against Samuel J. Yordan, \$252.00 against Edith Yordan and \$100.36 against Irving and Beatrice Yordan.

On June 16, 1954, the United States Tax Court entered decisions pursuant to stipulations between Appellants and the Commissioner of Internal Revenue agreeing to deficiencies in Federal income tax for the year 1946. On July 16, 1955, the Appellants sent to the Franchise Tax Board computations of their California income tax for the year 1946, based on the stipulations filed with the Tax Court. On September 27, 1955, Appellants sent copies of the stipulations and the Tax Court decisions to the Franchise Tax Board. On January 9, 1957, the Franchise Tax Board issued the proposed assessments which are the subject of this appeal,

The sole question presented is whether **Section** 18586.3 of the Revenue and Taxation Code bars the proposed assessments. The provisions of the Code, so far as they are relevant to the arguments presented, are as follows:

'(18451. If the amount of taxable income for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the

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United States or other competent authority, ... such taxpayer shall report such change or corrected taxable income ... within 90 days after the final determination of such change or correction.,, . Any taxpayer filing an amended return with such department shall also file within 90 days thereafter an amended return with the Franchise Tax Board which shall contain such information as it shall require."

"18586.2. If a taxpayer shall fail to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or shall fail to file an amended return as required by Section 18451, any deficiency resulting from such adjustments may be assessed and collected within four years after said change, correction or amended return is reported to or filed with the Federal Government."

"18586.3. If a taxpayer is required to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or to file an amended return as required by Section 18451 and does report such change or files such return, any deficiency resulting from such adjustments may be assessed within six months from the date when such notice or amended return is filed with the Franchise Tax Board by the taxpayer., ."

Although Appellants argue that the Franchise Tax Board knew that proceedings were in progress with the Federal authorities, it is undisputed that the Franchise Tax Board did not know the final result of those proceedings in the Tax Court until informed thereof by the Appellants many months thereafter. It is readily apparent that the Appellants did not comply with the requirement of Section 18451 that they report the change or correction in their income within 90 days.

Having failed to report the change as required by Section 18541, it would appear to follow under Section 18586.2 that the Franchise Tax Board then was allowed four years after the change to make the assessments. These assessments were made well within that period,

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Appellants ~~take the~~ position, however, that Section 18386.3 demanded that the assessments be made within six months after the Franchise Tax Board was notified of the change. They assume that this section applies unless there is failure to file an amended return when required by Section 18451. As we read Section ~~18586.3~~, it also becomes inapplicable ~~upon failure~~ to report a change in Federally-taxed income as required by Section 18451. Any other interpretation would make meaningless the requirement of Section 18431 that a report of the Federal change be filed within 90 days.

Reading the three sections as a whole, we conclude that the assessments in question were not barred.

O R D E R

Pursuant to the views expressed In the Opinion of the Board on file in this **proceeding**, and good cause appearing therefor,

XT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the **action** of the Franchise Tax Board on the protests of Philip Yordan, Samuel J. Yordan, Edith Yorclan and Irving and Beatrice Yordan to proposed assessments of additional personal income tax in the amounts of \$794.42 against Philip Yordan, \$252.00 against Samuel J. Yordan, \$252.00 against Edith Yordan, and \$100.36 against Irving and Beatrice Yordan for the year 1946 be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of November, 1958, by the State Board of Equalization.

Geo. R. Reilly, Chairman

J. H. Quinn, Member

Robert C. Kirkwood, Member

Robert E. McDavid, Member

\_\_\_\_\_, Member

ATTEST: Dixwell L. Pierce, Secretary